

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3522 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAMMOHAN BIJENDRA RAJPUT

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIKI for Petitioner
MR LR PUJARI AGP for Respondent Nos. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 26/10/1999

ORAL JUDGEMENT

#. Heard the learned advocate Mr. M. M. Tirmizi for the petitioner and learned AGP Mr. L.R. Pujari for respondent nos. 1, 2 and 3. The detention order dated 22.12.98 passed by respondent no. 2 - Commissioner of Police, Ahmedabad against the petitioner in exercise of power conferred under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition under

Article 226 of the Constitution of India.

#. The grounds of detention supplied to the petitioner under section 9 (1) of the PASA, copy of which is produced at Annexure : B indicate that a criminal case vide CR No. 5023/98 was registered on 17.12.98 against the petitioner at DCB City Police Station, Ahmedabad for the offences made punishable under the Bombay Prohibition Act and 168 bottles of foreign made liquor were seized from the possession of the petitioner. That the matter is pending investigation. The grounds further indicate that two witnesses on assurance of anonymity have supplied information regarding anti-social activities of the petitioner. They have stated in respect to the incidents alleged to have occurred on 14.12.98 and 22.11.98 respectively. That on the basis of the aforesaid material, respondent no.2 as detaining authority has come to a conclusion that that the petitioner is a "bootlegger" within the meaning of section 2 (b) of the PASA. That resort to general provisions of law is insufficient to prevent the petitioner from continuing his nefarious anti-social activity which is prejudicially affecting the maintenance of public order and as such, the impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that the representation dated 22.12.98 made by the petitioner has not been responded to. Not only that but the report of FSL or Chemical Analyzer in respect to the material seized from the possession of the petitioner is not provided to the petitioner.

#. Learned AGP Mr. L.R. Pujari, on instructions by referring to the original file and the affidavit of respondent no.2 dated 30th July, 1999 has urged that the representation of the petitioner-detenu was received by the Secretary (Special), Home Department, on 2nd August, 1999 which was immediately processed and reply was sent vide publication dated 6.8.99 to the detenu through Superintendent of Jail. That vide the said communication, the Commissioner of Police was advised to provide a copy of report of the FSL or the report of Chemical Analyzer to the detenu, if any, in existence. The learned AGP has submitted at the Bar that the material seized from the detenu in a registered case being foreign made liquor, no samples were taken and/or sent for chemical analysis or to FSL and as such, no report has been in existence.

#. That the detaining authority has not referred to and relied upon any such document and thereby the petitioner is not entitled to claim benefit for non supply of such document. Hence, the said contention of the petitioner cannot be accepted.

#. The second contention urged on behalf of the petitioner at the Bar is that while formulating the grounds of detention, respondent no.2 as detaining authority has failed to consider the less drastic remedy like cancellation of bail under section 437(5) of the Code of Criminal Procedure. That thereby on account of the said non application of mind, the impugned order has been vitiated.

#. On scrutiny of the grounds of detention, it appears that respondent no.2 has considered that the petitioner-detenu was likely to get bail in a registered case and thereafter he was likely to continue his anti-social activity and thereby it is necessary to detain the petitioner under the PASA. That the said observation made by the detaining authority suggests clear non application of mind to the less drastic remedy available under section 437(5) of the Cr.P.C. That such non application has vitiated the impugned detention order. Learned AGP could not explain or rebut the said contention and as such, the petition is required to be allowed on that count.

#. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 22.12.98 passed by respondent no.2 - Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside and the petitioner-detenu-Rammohan Bijendra Rajput is ordered to be set at liberty forthwith, if not required in any other case. Rule made absolute to that extent.

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